

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHY S. SMITH)	
Claimant)	
VS.)	
)	Docket No. 244,720
AUTOZONE, INC.)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Respondent appeals the September 3, 1999, preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. In the Order, claimant was granted benefits after the Administrative Law Judge found claimant proved accidental injury arising out of and in the course of her employment and timely notice.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?
- (2) Did claimant provide timely notice to respondent of the accident pursuant to K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant, respondent's parts sales manager, alleges accidental injury on January 26, 1999, while placing a car battery on a shelf. Claimant moved approximately a dozen batteries that day, with the injury occurring as she moved the last battery.

Claimant alleges she told the store manager, Mike Bournique, the day after the injury. Mr. Bournique denies this.

The evidence is conflicting regarding what claimant said and did during the next several days. Claimant did not attend work the next day but alleges she called her store manager. Claimant filled out certain forms at the doctor's office, some of which indicate workers' compensation involvement, some of which do not. Claimant explains the non-work-related documents by testifying that her daughter filled them out without claimant's knowledge and that the daughter signed them. The Appeals Board questions why a daughter would fill out a medical form in her mother's presence and sign the form without the mother's knowledge or permission.

Claimant did help prepare a leave of absence form which indicates that her injuries suffered on the 26th were workers' compensation related. This leave of absence form was faxed either from corporate headquarters to claimant's store, or from claimant's Autozone Store No. 1638 to corporate headquarters. The fax of February 3, 1999, does not adequately explain the notations at the top regarding where the document originated or to where it was sent. It is significant, however, that February 3, 1999, would be within ten days of claimant's January 26, 1999, alleged accident. If this document were provided to corporate headquarters, it would constitute timely notice of a work-related accident on January 26, 1999.

Connected to the leave of absence form is a handwritten note indicating that the leave of absence form should be faxed to Latania Black, who was identified as a corporate representative. The phone number to which the document was to be faxed is a corporate fax number. Additional explanation was not provided by respondent regarding when this information may have been received or whether it was ever received at corporate headquarters.

The Administrative Law Judge, after hearing claimant's testimony, found claimant had carried her burden of proof regarding both accident arising out of and in the course of and timely notice. The Appeals Board, while noting the conflicts in the record, finds for preliminary hearing purposes that claimant has carried her burden of proving accidental injury arising out of and in the course of her employment on the date alleged and that timely notice was provided to respondent of the accident.

K.S.A. 1998 Supp. 44-534a states that preliminary hearing findings shall not be binding in a full hearing on a claim but shall be subject to a full presentation of the facts. The Appeals Board anticipates additional explanation will be provided by the parties, and the numerous conflicts in this record will be clarified after a full hearing in this matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated September 3, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Christopher J. McCurdy, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director